as to awarding damages for past shipments. *Hussey* v. *Chicago, Rock Island, & Pacific R. R.*, 13 Interst. C. Rep. 366.

In general, a court which has once obtained jurisdiction over a case cannot be deprived of it by a subsequent change of circumstances. *Culver* v. *Woodruff County*, 5 Dill. (U. S.) 392. But, if the legislative act under which the court has jurisdiction is repealed during the action, the court loses power to pronounce judgment. *Railroad Co.* v. *Grant*, 98 U. S. 398. The organization of a territory into a state ordinarily repeals federal laws existing as to that territory. *Ames and Duff* v. *Colorado Central R. R.*, 4 Dill. (U. S.) 251. In the principal case it is clear that the Commission lost jurisdiction to regulate the rate in question for the future. But the repeal of the jurisdiction of a court must be express or necessarily implied. See *Pratt* v. *Atlantic & St. Lawrence R. R.*, 42 Me. 579. And it is not entirely clear that the organization of the territory into a state necessarily implied the loss of the commission's jurisdiction to award damages for shipments already made. The case goes on the ground that the Commission was not authorized to interfere with a rate unless such action would tend to establish the uniformity of the rate.

LANDLORD AND TENANT — CONDITIONS AND COVENANTS IN LEASES — ASSIGNMENT BY SALE UNDER LEGAL PROCESS. — The plaintiff gave a lease with a condition of re-entry if the lease should be assigned or the lessee's interest sold under execution or other legal process. At the lessor's request the court appointed a receiver for the lessee and ordered him to sell the leasehold. He sold without covenants to one who became bankrupt. The trustee in bankruptcy applied to the court for an order to sell the leasehold. *Held*, that the trustee may sell without forfeiting the term. *Gazlay* v. *Williams*, 210 U. S. 41.

In order to prevent a forfeiture courts of law will construe strictly a condition provided to work one. *Riggs* v. *Pursell*, 66 N. Y. 193. Accordingly in the absence of collusion amounting to fraud a transfer by operation of law is not regarded as violating a condition against assignment. *Doe* v. *Carter*, 8 T. R. 300; *In re Bush*, 126 Fed. 878. Furthermore the court seems justified in holding that the involuntary transfer to the trustee was not a sale under legal process. And the trustee in bankruptcy should not be bound by a covenant or condition against assigning; for the property came to him for that purpose. See *Doe* v. *Bevan*, 3 M. & S. 353. It is not clear whether the court considers applicable to this case the rule that a condition not to alien without license is terminated by the first license. *Dumpor's Case*, 4 Co. 119*b*. See 12 HARV. L. REV. 272. It seems very doubtful whether the rule applies; for the lessor expressly stipulated that the land be sold with the old covenants. If, however, there was a license sufficient to satisfy the rule, it was unnecessary for the court to construe the lease; for the condition would be terminated forthwith. See 20 HARV. L. REV. 420.

LANDLORD AND TENANT — CONDITIONS AND COVENANTS IN LEASES — SEVERANCE OF REVERSION. — The plaintiff leased to A with a condition providing for re-entry for failure to cultivate. The defendant through eminent domain proceedings received a conveyance of the reversion of part of the land and an assignment of the entire leasehold. The plaintiff claimed the right of re-entry for failure to cultivate. *Held*, that he is entitled to re-enter. *Piggott* v. *Middlesex County Council*, 125 L. T. 337 (Eng., Ch. D., July 24, 1908).

A grantee of part of a reversion is not allowed to enforce against the lessee a condition in the lease concerning the land. *Mitchell* v. *M'Cauley*, 20 Ont. App. 272. A severance of the reversion destroys the condition, and so even the grantor's right to sue. *Knight's Case*, 5 Co. 55 b. An early case established an exception in cases where the severance is "by descent, eviction or act of law," as opposed to an act of the parties. *Winter's Case*, Dyer 308 b. The main case in holding a severance by eminent domain an act of law within the exception reaches a just result. It was thought the reason for the general rule lay in the fact that otherwise two suits might be brought against the lessee. Accordingly, when this possibility was destroyed by a grant of part of the reversion to the lessee, a second exception was made. *Hyde* v. *Warden*, 3 Ex. D. 72.

This reasoning, however, is erroneous; for it would apply to covenants, and yet covenants pass with part of the reversion. *Twynam* v. *Pickard*, 2 B. & Ald. 105. The true basis for the rule is the law's hostility to a forfeiture.

LEGACIES AND DEVISES — LAPSED BEQUESTS AND DEVISES — PROVISION TO CANCEL A BOND. — A husband and wife joined in a mortgage bond to X. X, for the purpose of benefiting the wife, made a provision in her will cancelling the mortgage. The wife predeceased X. *Held*, that the husband is bound on the mortgage. *Simmons' Estate*, 65 Leg. Int. 406 (Dist. Ct., Pa., July 7, 1908).

A provision in a will cancelling the legatee's obligation on a bond given to the testator lapses on the legatee's predecease of the testator. *Toplis* v. *Baker*, 2 Cox Ch. 118. Nor will the fact that there is a surviving co-obligor prevent a lapse, if that co-obligor is not an object of the testator's bounty. *Maitland* v. *Adair*, 3 Ves. Jr. 231; *Izon* v. *Butler*, 2 Price 34. These decisions are in direct support of the principal case, since the cancellation of the bond was construed as a legacy to the wife. One case has been found, however, which holds that a provision in a will to cancel a bond does not lapse on the legatee's predecease. *Sibthorp* v. *Moxton*, 1 Ves. 48. But that case proceeds on the ground that it was the testator's intent to benefit the legatee's family. The correctness of the decision is very doubtful, for the members of the family are practically made beneficiaries without being mentioned in the will. See *Toplis* v. *Baker*, *supra*. Whatever its merits, it does not affect the present case, for here the sole intent of the testatrix was to benefit the wife.

MORTGAGES — FORECLOSURE — PROVISION FOR ACCELERATION OF DEBT. A mortgage provided that upon a default of thirty days in the payment of interest the mortgagee might elect to treat the whole debt as due. The mortgagor was not actually insolvent, but his affairs were placed in the hands of temporary receivers. The interest became due and the receivers allowed it to remain unpaid thirty days. The mortgagee thereupon sued to foreclose, but the mortgagor, having resumed business on the discharge of the receivers, tendered the interest due. *Held*, that the mortgagee is not entitled to foreclose. *Smith* v. *Lamb*, 59 N. Y. Misc. 568.

A provision of this kind is generally held not to be in the nature of a penalty or forfeiture, but to be valid and enforceable in equity as at law. *Pizer* v. *Herzig*, 120 N. Y. App. Div. 102; *Mobray* v. *Leckie*, 42 Ind. 474. Nor will the tender of interest due bar the mortgagee's right to foreclose. *Swearingen* v. *Lahner*, 93 Ia. 147. Equity, however, will refuse its aid where the enforcement of such a clause would be unconscionable. Accordingly, when the mortgagee has contributed to the default he cannot enforce the stipulation. *De Groot* v. *McCotter*, 19 N. J. Eq. 531; and see *Pizer* v. *Herzig*, *supra*. And although the mere negligence of the mortgagor is no excuse, an honest mistake is ground for relief. *Lynch* v. *Cunningham*, 6 Abb. Pr. (N. Y.) 94; *Martin* v. *Melville*, 11 N. J. Eq. 222. The facts here present a much stronger case for equitable relief. The court in the exercise of the sovereign power of the state has, by disabling the mortgagor from performance, caused the default. Similar circumstances have been held to excuse the non-performance of contracts. *Malcomson* v. *Wappoo Mills*, 88 Fed. 680. *Contra*, *Bolles* v. *Crescent Drug & Chemical Co.*, 53 N. J. Eq. 614. As it was not shown that the mortgagor would suffer by losing his right to foreclose, the decision accomplishes complete justice.

MUNICIPAL CORPORATIONS — ASSESSMENT FOR LOCAL IMPROVEMENTS — VARIANCE FROM CONTRACT AS DEFENSE. — A city council could provide for street improvements only through an ordinance. An ordinance was passed ordering the entire street on which the defendant's property abutted to be paved with brick except that a ten-foot strip was to be paved with crushed granite. A contract in conformity with this ordinance was made, but it was later altered to the extent that the whole street was paved with brick. A subsequent ordinance purported to ratify the improvement as so completed, and an assessment